

Planning for Informational Meetings Tool 1a

Detailed Description of the Permit Implementation Regulations

Briefly, the proposed regulations as recommended and approved by the CIWMB make the following key changes related to permit implementation:

1. Define the phrase “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit,” which determines when a SWFP needs to be revised.

The proposed regulations define the term “significant change in ...” using a methodical process in the form of a decision tree for EAs to follow when they are presented with a request by an operator to make changes to the SWFP. The methodology provides a consistent analytical process for EAs to use that allows EAs to consider site-specific considerations and circumstances when determining if a proposed change is significant and requires a revision to the permit. In following this process, requested changes to design and operation that require the permit to be changed will only be deemed significant if the EA determines that there is a need to condition or limit the new activity in order to protect public health, safety, the environment, or ensure compliance with state standards. It is made clear in the proposed definition that the term “significant change in ...” is only for purposes of determining when a permit needs to be revised and should not be used for making determinations of significance relative to potential impacts to the environment pursuant of CEQA.

2. Establish a methodology (a decision tree) for EAs to follow when presented with a request by an operator to make changes to the solid waste facilities permit (SWFP). By applying the methodology, the EA determines how to accommodate the changes proposed by the operator – through an RFI amendment, a modified permit, or a revised permit.

The methodology was developed to comply with AB 1497 requirements that the Board adopt regulations that define the term “significant change...” The methodology would determine if a proposed change can be approved through a report of facility information (RFI) amendment, a modified permit, or a revised permit process.

3. Establish apart from the decision tree a list of changes in the design or operation of a solid waste facility that would always be considered significant and require a revision to a SWFP.

The Board’s Permitting and Enforcement Committee directed staff at its November 7, 2005 meeting to work with stakeholders in the development of two lists that could be inserted into the regulations prior to beginning the 60-day comment period: first, a list of minor changes that would not require EA review

and approval prior to the operator taking action, and, second, a list of changes that would always require a revision to the permit. The purpose of the significant change list is to provide certainty to operators and EAs on what changes could be made by an operator in the design or operation of a solid waste facility that would always require a permit revision. The four significant changes listed in Section 21620(a)(4) were identified through the workshop process held in November 2005 and were recognized during the informal rulemaking process as acceptable changes for the significant change list. The Board considered comments received during the 60-day and 15-day comment periods, and Board staff's analysis in making its decision at its October 17, 2006 meeting to approve retaining the significant change list. The intent of the list is to identify a list of changes in the design or operation of a solid waste facility that would always be considered significant and always require a permit revision. For all other changes in the design or operation of a facility proposed by the operator that do not qualify as a minor change, the EA will use the decision tree in Section 21665 to determine if the proposed change can be approved through an RFI amendment, modified permit, or revised permit.

4. Authorize a method to change activities at a solid waste facility by means of a "modified permit" to allow modifications to a permit for changes in the design or operation of the facility that are less than a "significant change..." as defined in the proposed regulations.

Currently there is only one process defined in existing regulations to make any changes to a permit, i.e., a revised permit process. Pursuant to AB 1497 and the need to define changes that require a permit revision, it is apparent that there is need to define a process for changes that do not require a permit revision, but still require the permit to be changed to accommodate the less than significant change. In the proposed regulations, there are two ways a proposed change that requires the permit to be changed can qualify as a modified permit. First, a change can qualify if it is "nonmaterial" and would not result in any physical change that would alter the approved design or operation of the facility (Section 21665(d)(1)). This is a direct way for changes that clearly qualify as a permit modification. Second, a change can qualify for a modified permit if it results in a physical change to the existing design and operation of the facility, but the EA determines no need to add to the existing permit further restrictions, mitigations, terms or conditions to protect public health, public safety, ensure compliance with SMS, and to protect the environment (Section 21665(d)(2)). The proposed regulations provide that the Board's Executive Director would have the authority to act on behalf of the Board on modified permits.

5. Implement additional noticing requirements for amendments to the report of facility information (RFI) and modified, new, and revised permits; and establish informational meeting (hearing) requirements for new and revised full permits.

The proposed regulations implement additional noticing requirements for RFI amendments, modified permits, new and revised permit applications. The new noticing requirements for RFI amendments are less than those for a modified, revised or new permit and consist of the operator posting a notice at the facility entrance and the EA posting the notice on a public notice board, EA's web site, Board's web site, or operator's web site; the notice is required to be posted within 5 days after the EA approves the application for at least 10 days. The new noticing requirements for modified, revised, and new (full, registration, and standardized) permit applications are that the EA post a notice on the EA's or local jurisdiction's public notice board, and comply with Government Code Section 65091. Among other things, Section 65091 requires that notice of the hearing be mailed to the owners of real property within 300 feet of the facility in question and either be posted in three public locations (at least one of which must be directly affected by the proposed project) or published in a newspaper of general circulation. The EA is also allowed to take additional measures to increase public notice, such as noticing beyond 300 feet if the nearest residence or business is not within 300 feet, posting the notice in a local paper, and providing multilingual notice and translation. For new and revised full permit applications, the EA is required to notice the governing body of the local jurisdiction where the facility is located and the appropriate State Assembly Member and State Senator of an upcoming informational meeting.

The proposed regulations require the EA to conduct informational meetings for all revised and new full permit applications, but not for registration and standardized permits. The EA would be allowed to combine the informational meeting with another public meeting that meets specified criteria or to substitute the informational meeting with another meeting that is substantially the same as the EA meeting and meets specified criteria. The EA would be required to hold a separate meeting if the operator indicates objection to the proposed use of a substitute meeting.

6. Clarify that an operator can continue to make minor changes at a solid waste facility which do not require EA review and approval if the change meets specified criteria, the operator notifies the EA as required, and the change is on the minor change list, or if not listed, meets the criteria.

The Board considered comments received during the 60-day and 15-day comment periods, and Board staff's analysis in making its decision at its October 17, 2006 meeting to approve retaining the minor change list. The minor change

list (identified in the 60-day proposed regulations as “Alternative 1 Minor Change List” and “Alternative 2 Optional Minor Change List”) was incorporated into the proposed regulations under Section 21620(a)(1)(E). The intent of the minor change list is to allow operators to make minor changes without EA review, approval or prior notice that include, but are not limited to, those listed and that meet criteria specified in Section 21620(a)(1). These changes, whether listed or not, are supposed to be so minor that EA review and approval is not needed prior to the operator making the change. The listed changes were recognized during the informal rulemaking process as acceptable changes for the minor change list. The operator is required to notify the EA of the change within 30 days of making the change. If the EA finds the change is not minor, the EA is required to provide a written finding to the operator explaining why the change did not qualify as a minor change and to require the operator to comply with all applicable requirements. This could include the EA using the decision tree in Section 21665 to determine that the change requires an amendment to the RFI, a modified permit, or a revised permit. The idea of operators giving EAs a heads-up about potential upcoming changes is good and will be promoted in planned EA guidance and training.

7. Establish a new requirement that operators include with the permit application a list of all public notices and meetings conducted relative to the permit application.

CIWMB agenda items for new permit actions currently include a description of the level of community outreach used for purposes of addressing Environmental Justice (EJ) as it relates to the permit actions being considered. Requiring the operator to submit a list of all public notices and meetings conducted relative to the changes being requested in the application would improve the reporting of this information to the CIWMB and the furthering of EJ in the consideration of permit actions. This is necessary to be consistent with the intent of AB 1497, which requires that EJ concerns be considered in developing the regulations and new public noticing and hearing requirements be implemented for permit revisions.

8. Require the EA to notify all facility operators when they must apply for a five-year review of the permit, bringing consistency to the permit review process.

Currently this responsibility is shared by the Board and EAs. Board staff notifies operators holding registration and standardized permits; EAs notify operators of full permits. Requiring the EA, instead of the Board, to notify all facility operators of the need to apply for a five-year permit review, including for registration and standardized permits, is necessary to bring consistency to the task and to eliminate confusion among EAs as to their responsibilities.

9. Require the EA to design its inspection program so that facility inspections are unannounced and random, insofar as possible.

Current regulation authorizes the EA to conduct inspections without prior notice to the owner or operator during normal business hours or the site's operating hours whenever possible, but does not require the EA to do so, and the EA is not required to conduct the inspection on randomly selected days. Requiring the EA to conduct random inspections, whenever possible, is necessary to strengthen the concept that inspections should be conducted as surprise, random inspections when possible and provides consistency among all types of solid waste facilities and operations in requiring random and unannounced inspections.

10. Clarify the relationship between the SWFP and local land use decisions and approvals.

Currently a permit application package must include a copy of the land use and/or conditional use permit (CUP). EAs are required to review the application to determine if it is complete and correct. It is not clear what the EA should be doing relative to reviewing the land use entitlements and/or CUP and how the result of their review factors into the EA's decision-making relative to the SWFP application. Delays in the processing of some permits have resulted when EAs reject applications because they find them to be inconsistent with the land use entitlement and/or CUP.

Based on the comments received earlier during the 60-day comment period that the proposed regulations must avoid promoting/creating any conflict between the host jurisdiction's land use permits/entitlements and the SWFP, staff changed the proposed regulations from focusing on EA acceptance of a complete and correct permit application package to focusing on the actual drafting of permit terms and conditions by the EA, which is when it is appropriate for the EA to consider the content of the other entitlements, permits, and approvals. The proposed regulations include a note stating that when writing permit conditions, the EA should take into consideration Public Resources Code 44012, which requires the EA to ensure that primary consideration is given to protecting public health and safety and the preventing environmental damage, and the long-term protection of the environment; and the EA should be aware of and take into consideration other permits and approvals. The proposed regulations also allow for an increase in the opportunity for communication by requiring the operator to submit a copy of the SWFP application to the local planning agency when the application is submitted to the EA for consideration.